

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D. P. MARSHALL JR., JUDGE

DIVISION II

CACR06-1038

16 MAY 2007

ROBERT D. RHODES,

APPELLANT

AN APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[CR-05-480-1]

v.

STATE OF ARKANSAS,

APPELLEE

HONORABLE HAMILTON
HOBBS SINGLETON, JUDGE

AFFIRMED

A Union County jury convicted Robert Rhodes of the murder in the second degree of Robert “Hop” Leslie. Rhodes participated in a late-night shoot out at Paul’s Hamburger Stand, a club and pool hall in El Dorado. Leslie was a bystander. The twist in the case is this: the State stipulated at trial that Rhodes did not shoot Hop Leslie. We must decide whether the State presented substantial evidence that Rhodes nonetheless knowingly caused Leslie’s death within the meaning of our second-degree murder statute. Ark. Code Ann. § 5-10-103 (Repl. 1993).

I.

This is the evidence that supports the verdict, which is what we must consider against Rhodes's sufficiency challenge. *Hale v. State*, 343 Ark. 62, 74, 31 S.W.3d 850, 857 (2000). Rhodes and Darnel "Beau" Manning had a simmering dispute. They had threatened to kill each other. Around midnight on the evening of the shooting, Rhodes was in the doorway of Paul's Hamburger Stand. Hop Leslie, a regular at this establishment, stood to Rhodes's left holding open the door. The owner of the club was at Rhodes's right, also near the doorway.

A car pulled up. The passenger-side front window came down, revealing Beau Manning and another man. Manning brandished a pistol in Rhodes's direction. Rhodes said that he stumbled back into Paul's "cause I didn't want to get shot." By this time, Manning had opened the car door. After regaining his balance and pulling his own pistol, Rhodes started shooting through the club's doorway at Manning and his companion. Manning began shooting at Rhodes a moment later. A bullet from a gun other than Rhodes's pistol hit Hop Leslie in the abdomen, and he died from the wound a few hours later.

At trial, Rhodes moved for a directed verdict. He argued that the State had failed to offer sufficient evidence to show that he knowingly caused Leslie's death. Citing *Johnson v. State*, 270 Ark. 992, 606 S.W.2d 752 (1980), the State countered that it had proven Rhodes's knowledge of all the statutory elements. The circuit

court concluded that Rhodes put in motion the events that led to Leslie's death, denied Rhodes's motion, and sent the case to the jury.

II.

We hold that substantial evidence supports Rhodes's conviction. The governing statute says:

(a) A person commits murder in the second degree

if:

(1) He knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life[.]

Ark. Code Ann. § 5-10-103(a)(1). What must Rhodes have known to satisfy the statute? He must have been aware that he was shooting his pistol. This was undisputed. He must have been aware of the circumstances—he was in a public place, Manning had a gun, Manning had threatened to kill him, and Manning was pointing his gun at him. Substantial evidence exists on this statutory element too. And Rhodes must have been aware that, given all the surrounding circumstances, if he shot at Manning it was practically certain someone would be killed. Ark. Code Ann. § 5-2-202(2) (Repl. 2006); *Johnson*, 270 Ark. at 994, 606 S.W.2d at 754. The sufficiency of the evidence on this last point is the central issue in the case.

While in the midst of others in a public place, Rhodes started a gunfight at close range with an armed adversary. Substantial evidence exists that Rhodes's actions manifested extreme indifference to the lives of the people at Paul's

Hamburger Stand that night, and especially to Leslie and the club's owner. And substantial evidence exists that Rhodes was aware that it was practically certain someone would be killed once he began the gunfight.

Rhodes argues to the contrary from *Johnson*. There our supreme court reversed Johnson's conviction for second-degree murder in a bystander-death case. Johnson was in a parked car with his girlfriend. They were parked across the street from several clubs, and people were milling about on the sidewalks outside the clubs. Johnson's girlfriend got into a fight with an ex-boyfriend outside the car. Johnson grabbed a pistol from inside the car and began chasing the ex-boyfriend around the car and shooting at him. One of his shots hit a man crossing the street. The victim had been in the crowd in front of the clubs; but at the time he was shot, the victim was in the street headed away from the crowd. 270 Ark. at 993–94, 606 S.W.2d at 753. Because Johnson was not shooting into the crowd when he missed the ex-boyfriend and hit the victim, the supreme court held that it was not practically certain that Johnson was aware that a death would result from his actions. Therefore, insufficient evidence of intent existed to support Johnson's conviction for second-degree murder of the bystander. 270 Ark. at 994–95, 606 S.W.2d at 754.

We see several important differences between *Johnson* and this case. First, unlike Johnson, Rhodes did not shoot the bystander. This difference supports

Rhodes’s argument that insufficient evidence supports his conviction. But the statutory phrase—“causes the death of another person under circumstances manifesting extreme indifference to the value of human life”—is broad enough to cover this situation. Ark. Code Ann. § 5-10-103(a)(1). Causation existed under the statute because a death was the natural and probable result of Rhodes’s decision to start the gunfight with Manning. Second, the shooting in *Johnson* was one-sided because the ex-boyfriend was unarmed. Here, Rhodes knew that Manning was armed, had threatened to kill him, and was aiming a gun at him. Unlike Johnson, Rhodes started a two-sided gunfight in a public place. Third, Rhodes opened fire from just inside the club. The doorway was flanked by Hop Leslie and the club’s owner, and the place was crowded with people. Rhodes thus drew Manning’s gun fire toward others. *Johnson* involved shots across a public street—admittedly dangerous actions; but Rhodes’s actions created an even greater risk of harm because he started a gunfight at close range in the entrance of a crowded public place.

The facts distinguish this case from *Johnson*. And they compel the legal conclusion that substantial evidence supports the jury’s verdict that Rhodes acted knowingly in causing Hop Leslie’s death.

III.

Rhodes’s second point of appeal is that the circuit court erred in enhancing

his sentence under Ark. Code Ann. § 16-90-120(a) (Repl. 2006) because the underlying offense involved a firearm. Rhodes's only argument here is, again, that substantial evidence does not support his murder conviction. We have rejected that contention. We therefore affirm Rhodes's sentence as well.

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.